



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,401	04/11/2001	Roman S. Ferber	HOME 0459 PUS	3432

7590 02/16/2010
Kevin J. Heint
Brooks & Kushman P.C.
22nd Floor
1000 Town Center
Southfield, MI 48075-1351

EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
----------	--------------

3764

MAIL DATE	DELIVERY MODE
-----------	---------------

02/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/833,401	Applicant(s) FERBER ET AL.	
	Examiner Fenn C. Mathew	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/14/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 01/14/2010 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 26-32 and 35-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has claimed a myriad of limitations with respect to the structure, shape, and positioning of the foam blocks.

Examiner respectfully points out that page 6, lines 8-10 provide the only mention of the foam blocks, and fails to recite any of the claimed structural limitations.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 14-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandrin (U.S. 5,050,591) in view of Cook (U.S. 3,045,254). Referring to claim 14, Sandarin discloses a flexible member (1) having at least two layers defining a plurality of passageways (32), a receptacle (4) through which compressed air is provided to the air passages, a plurality of air holes (5) formed in the air passages, and a plurality of hermetically sealed passages secured between the layers defining the plurality of air passages at spaced locations adjacent the air passages and sealed between the layers to prevent water contact (col. 4, lines 8-25). Sandarin discloses that the hermetically sealed passages are filled with water or air in order to cushion a user during use. In col. 16, lines 4-7, Baumann suggests in an analogous device a plurality of foam blocks are desirable for their cushioning properties. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to fill the hermetically sealed passages of Sandarin with foam or foam rubber as taught by Baumann in order to provide alternative cushioned support for a user. Inherently, filling the passages with foam rubber would result in blocks having a fixed size and shape. Referring to claim 15, Sandarin as modified discloses the mat made of a flexible member including a soft vinyl

Art Unit: 3764

material (co. 2, lines 65-68). Referring to claim 16, the modified Sandarin discloses the two layers of the flexible member are polymer sheet material secured together at spaced locations to define air passages (see abstract). Referring to claim 17, Sandarin discloses a limited number of holes of limited size. Referring to claim 18, Sandarin discloses the 'cushioning members' sealed separately from the air passages, with each chamber being made of a polymer material. Referring to claim 19, Sandarin discloses the two layers of the thermoplastic sheet material bonded together around the cushioning chambers and defining air passages in a branched array. Referring to claims 20-25, the claims are essentially similar in scope to claims 14-19. See the above discussion. Furthermore, Sandarin teaches a plurality of discrete chambers which would lead to a plurality of discrete foam blocks as modified. Sandarin further teaches that the chambers are hermetically sealed and do not come in contact with the water. Additionally, filling the chambers with foam would prevent volumetric alterations as best understood. With respect to claim 26, as best understood, the volume of material for the plurality of foam members would be the same for a majority of the members as Sandarin teaches identical passages that are filled. With respect to claim 27-32, specific limitations drawn to the shape, number, or patterns created by the foam blocks amount to a mere matter of design choice absent criticality or unexpected results. Referring to claims 33-38, the claims are substantially similar in scope to the claims listed above, therefore, note the above rejections. With respect to claim 33, Sandarin teaches non-ventilated chambers as broadly construed. With respect to claim 34, the modified Sandarin teaches the use of foam rubber which would have a first profile in the

Art Unit: 3764

'relaxed state' and second profile when compressed, but would revert back to the first profile. With respect to claim 38, as best understood, the blocks would maintain a constant size and shape when all fluid was removed.

Response to Arguments

6. Applicant's arguments filed 01/14/2010 with respect to claims 14-25 have been fully considered but they are not persuasive. Please note the above rejections.

Applicant's arguments with respect to claims 26-38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fenn C Mathew/
Primary Examiner, Art Unit 3764
February 5, 2010